



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL 7015 1730 0001 8044 3279  
RETURN RECEIPT REQUESTED

MAY 18 2016

Mr. Howard R. Brown, President  
C.R. Brown Enterprises, Inc.  
235 Milton Mashburn Drive  
Andrews, North Carolina 28901

Re: Letter of Concern and Information Request Pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318, for the Cherokee Trout Farm, National Pollutant Discharge Elimination System (NPDES) Permit No. NC0054992

Dear Mr. Brown:

The purpose of this Letter of Concern is to notify you that on March 1, 2016, the U.S. Environmental Protection Agency visited your facility, the Cherokee Trout Farm (formerly known as "Morgan Mill at Cherokee Trout Farm"),<sup>1</sup> located at 10285 Big Cove Road, Cherokee, North Carolina 28719, Latitude 35° 34' 32" North; Longitude 83° 15' 30" West (Facility), and witnessed wastewater bypasses at multiple locations due to berm failure along its treatment ponds and unauthorized discharges into Raven Fork River.

Furthermore, during the same March 1, 2016 visit, the EPA witnessed a point source wastewater discharge into the Raven Fork River from the secondary trout raceway system. This office received your NPDES permit application, dated October 23, 2014, in which this wastewater point source was not included.

Upon further review of the EPA's files, it is apparent that the Facility has had a long history of CWA noncompliance. Specifically:

- On February 11, 2004, EPA staff conducted an NPDES compliance evaluation inspection at the Facility, and noted that the Facility did not have flow measurement capability at that time, nor was the Facility monitoring its effluent and reporting its characteristics, as required by the Facility's NPDES Permit. The EPA transmitted its findings to the Facility's then-operator, Morgan Mill Resorts, Inc. ("MMR"),<sup>2</sup> in a letter dated March 5, 2004. (Enclosure A).
- During a permit site visit on May 18, 2004, EPA staff observed unauthorized discharges and bypasses from the Facility's settling ponds into the Raven Fork River. The EPA subsequently issued MMR Administrative Order No. CWA-04-2005-4751 on December 17, 2004, which directed MMR to dredge all sediment in the Facility's settling ponds and repair all breaks in the settling pond walls. (Enclosure B).

<sup>1</sup> The October 27, 2014 NPDES application for this Facility uses the name, "Cherokee Trout Farm," whereas the 2008 NPDES application and subsequent 2009 NPDES Permit list the permittee as "Morgan Mill at Cherokee Trout Farm." The Facility is referred to herein as the "Cherokee Trout Farm" to be consistent with the NPDES application currently pending before the EPA.

<sup>2</sup> The Facility's NPDES Permit was transferred to the current operator, C.R. Brown Enterprises, Inc., on October 12, 2012.

- The EPA conducted a follow-up NPDES compliance evaluation inspection at the Facility on April 28, 2005, and observed that dredged sediment from the settling ponds was placed on the banks of the Raven Fork River, potentially discharging into the River, as well as an overflow pipe that could potentially divert wastewater from the settling ponds into the Raven Fork River. On June 9, 2005, the EPA issued MMR a new Administrative Order, No. CWA-04-2005-4779, which superseded the previously-issued AO, and required MMR to submit a plan to the EPA for the removal and proper disposal of all dredged sediment. (Enclosure C).
- On September 21, 2005, the EPA issued MMR Administrative Order No. CWA-04-2005-4805, which superseded AO No. CWA-04-2005-4779, and required MMR to properly implement best management practices along the bank of the Raven Fork River and to implement its plan for the removal and proper handling of sediment at the Facility. (Enclosure D).
- On March 23, 2006, the EPA conducted an NPDES compliance evaluation inspection at the Facility and noted additional CWA deficiencies, including noncompliance with Administrative Order No. CWA-04-2005-4805, lack of flow measuring, and failure to timely submit required discharge monitoring reports (DMRs). (Enclosure E).
- On August 29, 2007, the EPA conducted an NPDES compliance evaluation inspection at the Facility and noted continuing CWA deficiencies, including noncompliance with Administrative Order No. CWA-04-2005-4805, and in the maintenance and operations of the settling ponds. (Enclosure F).
- In August 2010, the EPA informed MMR that it had not submitted certification to the EPA that it had developed and implemented the Best Management Practices (BMP) Plan required pursuant to the Facility's permit. (Enclosure G). The EPA subsequently issued MMR an Administrative Order, No. CWA-04-2011-4759, on March 31, 2011 requiring MMR to submit a copy of the BMP Plan to the EPA.<sup>3</sup> (Enclosure H).
- On May 11, 2011, the EPA conducted an NPDES compliance evaluation inspection at the Facility, and noted that the effluent discharge outfall was inaccessible and needed repair. In its letter transmitting its findings dated June 17, 2011, the EPA requested that MMR provide a written response within ten days of receipt of the letter. (Enclosure I).
- On September 17, 2012, the EPA conducted an NPDES compliance evaluation inspection at the Facility, and observed the unauthorized point source discharge from the secondary trout raceway system at the Facility. Following the EPA's September 2012 inspection, the EPA transmitted an inspection report to you, noting that discharge required NPDES permit coverage. (Enclosure J).
- The Facility's NPDES Permit expired on November 30, 2014. Pursuant to 40 C.F.R. § 122.21(d) and Permit Part II.D.12, you were required to submit a complete NPDES permit application at least 180 days before the previous permit expiration date. Because you had not timely submitted a complete permit application, the EPA entered into Administrative Order on Consent, No. CWA-04-2014-4767 (AOC), with you, effective September 8, 2014 (Enclosure K). The AOC required you to submit a complete NPDES permit application within 60 days of the effective date of the AOC.<sup>4</sup>

<sup>3</sup> The Facility's current operator, C.R. Brown Enterprises, Inc., provided the EPA with a copy of the BMP Plan on August 31, 2012.

<sup>4</sup> You transmitted your current NPDES Permit application to the EPA on October 23, 2014.

The EPA is continuing to investigate your compliance with the CWA. Therefore, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, the EPA hereby requests that you provide the information set forth in Enclosure L within 21 calendar days of your receipt of this letter.

Your response should be submitted to:

Michael Hom, Environmental Engineer  
U.S. Environmental Protection Agency, Region 4  
Stormwater and Residuals Enforcement Section  
NPDES Permitting and Enforcement Branch  
Water Protection Division  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Failure to provide a full and complete response to this information request or to adequately justify a failure to respond within the time frame specified above may result in an EPA enforcement action pursuant to federal law, including, but not limited to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 18 U.S.C. § 1001.

If you believe that any of the requested information constitutes confidential business information, you may assert a confidentiality claim with respect to such information, except for effluent data. Further details, including how to make a business confidentiality claim, are found in Enclosure M.

All information submitted must be accompanied by the following certification that is signed by a duly authorized official in accordance with 40 C.F.R. § 122.22:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Also enclosed as Enclosure N is a document entitled *U.S. EPA Small Business Resources-Information Sheet* to assist you in understanding the compliance assistance resources and tools available to you. Any decision to seek compliance assistance at this time, however, does not relieve you of your obligation to the EPA nor does it create any new rights or defenses, and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission (SEC) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the SEC. To assist you, the EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*. (Enclosure O).

If you have any questions regarding this Letter of Concern and Information Request, you may contact Mr. Michael Hom at (404) 562-9748 or by e-mail to [hom.michael@epa.gov](mailto:hom.michael@epa.gov). Permit inquiries should be directed to Mr. Kip Tyler at (404)-562-9294 or by email to [tyler.kip@epa.gov](mailto:tyler.kip@epa.gov). Legal inquiries should be directed to Ms. Suzanne Armor, Attorney Advisor, at (404) 562-9701 or by e-mail to [armor.suzanne@epa.gov](mailto:armor.suzanne@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Denisse D. Diaz", with a stylized flourish at the end.

Denisse D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division

Enclosures (15)

cc: The Honorable Patrick Lambert, Principal Chief  
Eastern Band of Cherokee Indians

Mr. Jeremy Hyatt, Secretary  
Administration and Public Works  
Eastern Band of Cherokee Indians

## ENCLOSURE A





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 05 2004

**CERTIFIED MAIL 7099 3400 0003 2827 2819**  
**RETURN RECEIPT REQUESTED**

A. Dale Owen, Owner/Operator  
Morgan Mill Resorts Inc.  
15 Morgan Mill Road  
Brevard, North Carolina 28712

SUBJ: Compliance Evaluation Inspection Report  
Morgan Mill Trout Farm, NPDES Permit No. NC0054992

Dear Mr. Owen:

Representatives of the United States Environmental Protection Agency (EPA), Region 4 conducted compliance evaluation inspections at the Morgan Mill Trout Farm located off of Big Cove Road in Cherokee, North Carolina on February 11, 2004 to determine compliance with the National Pollutant Discharge Elimination Permit (NPDES) which has been issued to the facility pursuant to the Clean Water Act (CWA). EPA would like to extend its appreciation for the cooperation provided by you during the inspection.

Enclosed is the inspection report for the facility, which contains some deficiencies which were noted during the inspection. Please provide EPA with the actions which you plan to take or have already taken to correct these deficiencies within fifteen (15) days of receipt of this letter.

If you have any questions, please contact Melinda Mallard Greene at (404) 562-9771 or via email at [mallard-greene.melinda@epa.gov](mailto:mallard-greene.melinda@epa.gov).

Sincerely,

David Y. Parker, Jr., Chief  
Eastern Enforcement Section  
Water Programs Enforcement Branch  
Water Management Division

Enclosure

cc: Bill Patton, EAD  
Joan Redleaf-Durbin, EAD  
Carmen McIntyre, EBCI

# Water Compliance Inspection Report

## Section A: National Data System Coding (i.e., PCS)

[illegible]

### Section B: Facility Data

Name and Location of Facility Inspected (For industrial users discharging to POTW, also include POTW name and NPDES permit number) Morgan's Mill Resorts Inc. Trout Farm Big Cove Road Cherokee, NC		Entry Time/Date 2/11/04 10:45am	Permit Effective Date 1/1/00
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) Dale Owen, Owner/Operator 828 884 6823		Exit Time/Date 2/11/04 11:30am	Permit Expiration Date 9/30/04
Name, Address of Responsible Official/Title/Phone and Fax Number Dale Owen, Owner		Other Facility Data	
Contacted <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			

## Section C: Areas Evaluated During Inspection (Check only those areas evaluated)

<input checked="" type="checkbox"/>	Permit	<input checked="" type="checkbox"/>	Flow Measurement	<input checked="" type="checkbox"/>	Operations & Maintenance	<input type="checkbox"/>	CSO/SSO (Sewer Overflow)
<input checked="" type="checkbox"/>	Records/Reports	<input checked="" type="checkbox"/>	Self-Monitoring Program	<input type="checkbox"/>	Sludge Handling/Disposal	<input type="checkbox"/>	Pollution Prevention
<input checked="" type="checkbox"/>	Facility Site Review	<input type="checkbox"/>	Compliance Schedules	<input type="checkbox"/>	Pretreatment	<input type="checkbox"/>	Multimedia
<input checked="" type="checkbox"/>	Effluent/Receiving Waters	<input type="checkbox"/>	Laboratory	<input type="checkbox"/>	Storm Water	<input type="checkbox"/>	Other:

## Section D: Summary of Findings/Comments (Attach additional sheets of narrative and checklists as necessary)

see attached narrative.

\* Formally Cherokee Tract Farm

Name(s) and Signature(s) of Inspector(s) <i>Melinda Green</i> Melinda Green	Agency/Office/Phone and Fax Numbers EPA RH / 404 56 29771	Date 2/23/04
Bruce Henry <i>[Signature]</i>	EPA RH	2/25/04
Signature of Management Q A Reviewer <i>David Parker, CNE, EES</i> David Parker, CNE, EES	Agency/Office/Phone and Fax Numbers EPA RH / 404 56 29460	Date 2/27/04



**Compliance Evaluation Inspection**  
**NPDES Permit No. NC0054992**  
**Morgan Mill Trout Farm**  
**Cherokee, NC**

On February 11, 2004, Melinda Mallard Greene and Bruce Henry with the United States Environmental Protection Agency (EPA), Region 4 conducted a compliance evaluation inspection (CED) at the Morgan Mill Trout Farm, located off of Big Cove Road in Cherokee, North Carolina. The owner of the facility, Dale Owen was present during the inspection. Also present were Carmen McIntyre and Mike Bolt, with Cherokee Tribal Utilities.

**Permit**

Morgan Mill Trout Farm discharges wastewater from trout raceways to Raven Fork River pursuant to NPDES permit no. NC0054992. The NPDES permit was issued on October 8, 1999, with an effective date of January 1, 2000. This permit will expire on September 30, 2004. This facility underwent a change of ownership and facility name in 1999. A complete copy of the permit is enclosed.

**Requirement:** In accordance with Part II, Section D, item 11, the permittee is required to reapply for a permit within 180 days of the expiration date of the current permit. For this permit, the permittee must reapply by March 31, 2004. A permit application has been enclosed with this report. The application should be completed and returned to the attention of Floyd Wellborn, EPA Region 4, by March 31, 2004.

In accordance with Part II, Section D, Item 3, the permittee must notify EPA of a transfer of ownership of the facility. Please provide this notification to EPA immediately.

**Recommendation:** A copy of the NPDES permit should be kept onsite at the facility.

**Facility Site Review**

Mr. Owen operates a large trout farm which consists of 3 raceways consisting of 8 ponds each. Water is diverted from Raven Fork River into the 3 trout raceways via gravity. The pH of the water is monitored and adjusted by the addition of sodium hydroxide until the pH is around 6.0 SU. Water from the raceways flows into 2 dirt ponds in parallel then into 1 dirt pond and again into another set of raceways. Effluent is discharged into a ditch and thence to Raven Fork River. Access to the outfall is through the River.

**Effluent/Receiving Waters**

The facility was discharging at the time of the inspection. The effluent appeared to be free of foam, visible solids, and sheen.

**Flow Measurement**

The facility does not currently have flow measurement capability.

**Requirement:** The permittee must monitor and report flow in accordance with Part I,

Section A of the NPDES permit.

**Self-Monitoring Program/Records/Reports**

Mr. Owen has not been monitoring the effluent and reporting its characteristics in accordance with the NPDES permit. Therefore, there were no records to review.

Requirement: The permittee must monitor and report effluent data in accordance with Part I, Section A and Part III, Section A of the NPDES permit. Failure to monitor and report the characteristics of the effluent in accordance with NPDES permit requirements could subject the facility to enforcement pursuant to Section 309 of the Clean Water Act. Note that monitoring must be conducted in accordance with Part II, Section C, Items 1, 2, and 3, and records keep in accordance with Part II, Section C, Items 5 and 6.

**Operations and Maintenance**

The facility related to wastewater appeared to be adequately operated and maintained.

## ENCLOSURE B

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
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61 FORSYTH STREET  
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RETURN RECEIPT REQUESTED

REF: 4WM-WPEB

Mr. A. Dale Owen, Operator  
Morgan Mill Resorts, Inc.  
15 Morgan Mill Road  
Brevard, NC 28712

SUBJ: Administrative Order No. CWA-04-2005-4751  
NPDES Permit No. NC0054922 NC 0054922  
Morgan Mill Trout Farm

Dear Mr. Owen:

Pursuant to Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), as amended, the Director, Water Management Division, Region 4, United States Environmental Protection Agency (EPA), has determined that the above named corporation is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. As a result, the Director has issued the enclosed Sections 308 and 309(a) Order.

This Order is issued to enforce existing requirements under the Act and therefore, does not replace, modify or eliminate any other requirement of the Act. Notwithstanding the issuance of this Sections 308 and 309(a) Order, the EPA retains the right to bring further enforcement action under Sections 309(d) or 309(g) of the Act, for the violations cited in this Order and for any other violation of the Act. Violations of the Act, including requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit or a Sections 308 and 309(a) Order, remain subject to a civil penalty of up to \$32,500 per day for each violation pursuant to Sections 309(d) or 309(g), 33 U.S.C. §§ 1319(d) or 1319(g) of the Act. Such violations of the Act may also be subject to criminal action.

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* for your use and to assist you in understanding the compliance assistance resources and tools available to you. However, any decision to seek compliance assistance at this time does not relieve you of your obligation to EPA, does not create any new rights or defenses, and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission (SEC) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the SEC. To assist you, EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*.

Should you have any questions concerning the enclosed Order, please contact Melinda Mallard Greene at (404) 562-9771.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas F. Mundrick", is written over the typed name.

Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division

Enclosure

cc: Ms. Carmen McIntyre, Eastern Band of Cherokee Indians  
Mr. Alan Klimek, North Carolina Division of Water Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 17 2004

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REF: 4WM-WPEB

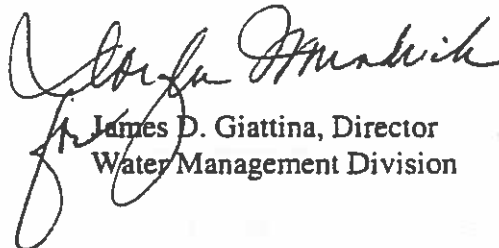
Mr. Alan Klimek, Director  
Division of Water Quality  
North Carolina Department of Environment  
and Natural Resources  
P.O. Box 29535  
Raleigh, NC 27626-0535

SUBJ: Administrative Order No. CWA-04-2005-4751  
NPDES Permit No. NC0054922  
Morgan Mill Trout Farm

Dear Mr. Klimek:

Pursuant to Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a), I have determined that the above referenced facility is in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. As a result, I have issued an Administrative Order (AO), a copy of which is enclosed for your reference. The AO is presently being served.

Sincerely,



James D. Giattina, Director  
Water Management Division

Enclosure

cc: Ms. Carmen McIntyre, Eastern Band of Cherokee Indians

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

Morgan Mill Resorts, Inc.	)	
MORGAN MILL TROUT FARM	)	ADMINISTRATIVE ORDER NO.
Cherokee, NC	)	CWA-04-2005-4751
	)	
	)	
PROCEEDING UNDER SECTIONS 308	)	FINDINGS OF VIOLATION
AND 309(a) OF CLEAN WATER ACT,	)	AND
33 U.S.C. §§ 1318 and 1319 (a); in Re	)	ORDER FOR COMPLIANCE
NPDES Permit No. NC0054922	)	

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. Section 1318 and 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and re-delegated by the Regional Administrator to the Director of the Water Management Division.

FINDINGS

1. Morgan Mill Resorts, Inc. is a corporation doing business in the State of North Carolina and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362.
2. The objective of the CWA, as set forth in Section 101(a) of the CWA, 33 U.S.C. § 1251(a) is to restore and maintain the chemical, physical, and biological integrity of the nation's water.
3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants



into the navigable waters of the United States, except in compliance with an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

4. At all times relevant to this Matter, Morgan Mill Resorts, Inc. (Respondent) operated Morgan Mill Trout Farm, which is located on Big Cove Road, Cherokee, Swain County, North Carolina. The trout farm discharges treated wastewater, which contains pollutants, into Raven Fork, navigable waters of the United States, as defined in Section 502 (7) of the Act, 33 U.S.C. § 1562(7).

5. On October 8, 1999, EPA Region 4 issued to Morgan Mill Trout Farm, NPDES Permit No. NC0054922 (the Permit) authorizing a discharge from the Morgan Mill Trout Farm to Raven Fork in compliance with the terms, conditions, and requirements of the permit, with an expiration date of September 30, 2004. The Permit was reissued by EPA on September 22, 2004, with an expiration date of September 30, 2009.

6. On May 18, 2004, personnel from the EPA visited the Morgan Mill Trout Farm and observed excess sediment in the Morgan Mill Trout Farm's settling ponds and breaks in the settling pond walls, allowing pollutants to enter into Raven Fork from a location other than the permitted outfall. Part II, Section B, Proper Operation and Maintenance of the permit requires that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee to achieve compliance with the conditions of the permit. According to Part II, Section B, Bypass Treatment Facilities d(1),

"Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless: (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; (b) There were no feasible alternatives to the

bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and (c) The permittee submitted notices as required under paragraph (c) of this section."

7. Based on observations made by personnel from EPA on May 18, 2004, a Section 308 Request was sent to Respondent on June 24, 2004. The Section 308 response received from Respondent confirmed that Morgan Mill Trout Farm created manmade breaks in the settling ponds to allow pollutants to discharge to Raven Fork from a location other than the permitted outfall. In addition, Respondent indicated the settling ponds have not been dredged since at least 1999 and that pollutants were discharged from a location other than the permitted outfall.

8. The Morgan Mill Trout Farm has violated the NPDES Permit No. NC0054922, Part II, Section B, Proper Operation and Maintenance through improper maintenance of settling ponds. In addition, Morgan Mill Trout Farm has violated the bypass provision contained in Part II, Section B of the Permit by creating manmade breaks and diverting wastewater from the settling ponds, allowing the wastewater to enter Raven Fork in absence of conditions required for an allowable bypass.

9. Based on the above, I find that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

#### ORDER

Based on the foregoing FINDINGS and pursuant to the authority of Sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, IT IS HEREBY ORDERED that the Respondent comply with the following requirements:

10. Within ninety (90) days after the effective date of this ORDER, Respondent shall dredge all sediment in each of its settling ponds and repair all breaks in the settling pond walls. Respondent shall inspect and perform maintenance (including dredging) on the settling ponds regularly as needed for proper operation and to ensure all effluent flows through the treatment ponds as designed and is discharged through the permitted outfall. Respondent shall maintain records of all inspections and maintenance.

11. Ninety (90) days following the dredging, and every ninety (90) days thereafter, Respondent shall monitor and report to EPA sediment levels in each of the settling ponds. This monitoring and reporting shall continue for one year following initial dredging.

12. Within fifteen (15) days of completion of the tasks required in paragraphs 10 and 11 above, Respondent shall submit a letter to EPA certifying compliance.

13. Information required to be submitted by this Order shall be sent by certified mail, or its equivalent, to the following addressee:

Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
ATTN: Melinda Mallard Greene

14. All submittals made in response to this Order must be accompanied by the following certification, which is to be signed by a responsible agency official in accordance with 40 C.F.R.

Section 122.22:

"I certify under penalty of law that this document and all attachments were prepared by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

15. Failure to comply with the requirements of this Order shall constitute a violation of this Order and the CWA and may subject the Respondent to penalties as provided in Sections 309(d) or 309 (g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g).

16. This Order does not operate as an NPDES permit nor does it replace, modify or eliminate any requirement of the CWA or the NPDES Permit. Nothing contained herein shall be construed as prohibiting prosecution for the violations cited in this Order, for violations of the Order itself, or for any other violations of the CWA.

17. This Order shall become effective upon receipt.

\_\_\_\_\_  
Date

  
James D. Giattina, Director  
Water Management Division

## ENCLOSURE C

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

June 9, 2005

CERTIFIED MAIL 7001 2510 0008 6430 4379  
RETURN RECEIPT REQUESTED

REF: 4WM-WPEB

Mr. A. Dale Owen, Operator  
Morgan Mill Resorts, Inc.  
P.O. Box 193  
Balsam Grove, North Carolina 28708

SUBJ: Administrative Order No. CWA-04-2005-4779  
NPDES Permit No. NG0054922  
Morgan Mill Trout Farm

Dear Mr. Owen:

On April 28, 2005, representatives of the United States Environmental Protection Agency (EPA), Region 4 conducted a compliance evaluation inspection at Morgan Mill Trout Farm. An inspection report is enclosed which describes the observations made during the inspection. One or more deficiencies were noted during the inspection, therefore, pursuant to Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), as amended, the Director, Water Management Division, Region 4, EPA, has determined that the above named corporation is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. As a result, the Director has issued the enclosed Sections 308 and 309(a) Order. This Order supersedes Administrative Order No. CWA-04-2005-4751, which is hereby closed on the effective date of this Order.

This Order is issued to enforce existing requirements under the Act and therefore, does not replace, modify or eliminate any other requirement of the Act. Notwithstanding the issuance of this Sections 308 and 309(a) Order, the EPA retains the right to bring further enforcement action under Sections 309(d) or 309(g) of the Act, for the violations cited in this Order and for any other violation of the Act. Violations of the Act, including requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit or a Sections 308 and 309(a) Order, remain subject to a civil penalty of up to \$32,500 per day for each violation pursuant to Sections 309(d) or 309(g), 33 U.S.C. §§ 1319(d) or 1319(g) of the Act. Such violations of the Act may also be subject to criminal action.

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* for your use and to assist you in understanding the compliance assistance resources and tools available to you. However, any decision to seek compliance assistance at this time does not relieve you of your obligation to EPA, does not create any new rights or defenses, and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission (SEC) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the SEC. To assist you, EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*.

Should you have any questions concerning the enclosed Order, please contact Melinda Mallard Greene at (404) 562-9771.

Sincerely,



67 Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division

Enclosures

cc: Ms. Carmen McIntyre, Eastern Band of Cherokee Indians  
Mr. Alan Klimek, North Carolina Division of Water Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

Morgan Mill Resorts, Inc.  
MORGAN MILL TROUT FARM  
Cherokee, North Carolina

)  
) ADMINISTRATIVE ORDER NO.  
) CWA-04-2005-4779  
)  
)

PROCEEDING UNDER SECTIONS 308 ) FINDINGS OF VIOLATION  
AND 309(a) OF CLEAN WATER ACT, ) AND  
33 U.S.C. §§ 1318 and 1319 (a); in Re ) ORDER FOR COMPLIANCE  
NPDES Permit No. NC0054922 )

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. Section 1318 and 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and re-delegated by the Regional Administrator to the Director of the Water Management Division.

FINDINGS

1. Morgan Mill Resorts, Inc. is a corporation doing business in the State of North Carolina and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362.
2. The objective of the CWA, as set forth in Section 101(a) of the CWA, 33 U.S.C. § 1251(a) is to restore and maintain the chemical, physical, and biological integrity of the nation's water.

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into the navigable waters of the United States, except in compliance with an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

4. At all times relevant to this Matter, Morgan Mill Resorts, Inc. (Respondent) operated Morgan Mill Trout Farm, which is located on Big Cove Road, Cherokee, Swain County, North Carolina. The trout farm discharges treated wastewater, which contains pollutants, into Raven Fork, navigable waters of the United States, as defined in Section 502 (7) of the Act, 33 U.S.C. § 1562(7).

5. On October 8, 1999, EPA Region 4 issued to Morgan Mill Trout Farm, NPDES Permit No. NC0054922 (the Permit) authorizing a discharge from the Morgan Mill Trout Farm to Raven Fork in compliance with the terms, conditions, and requirements of the permit, with an expiration date of September 30, 2004. The Permit was reissued by EPA on September 22, 2004, with an expiration date of September 30, 2009.

6. On May 18, 2004, personnel from the EPA visited the Morgan Mill Trout Farm and observed excess sediment in the Morgan Mill Trout Farm's settling ponds and breaks in the settling pond walls, allowing pollutants to enter into Raven Fork from a location other than the permitted outfall. Part II, Section B, Proper Operation and Maintenance of the permit requires that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee to achieve compliance with the conditions of the permit. According to Part II, Section B, Bypass Treatment Facilities d(1).

"Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless: (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and (c) The permittee submitted notices as required under paragraph (c) of this section."

7. Based on observations made by personnel from EPA on May 18, 2004, a Section 308 Request was sent to Respondent on June 24, 2004. The Section 308 response received from Respondent confirmed that Morgan Mill Trout Farm created manmade breaks in the settling ponds to allow pollutants to discharge to Raven Fork from a location other than the permitted outfall. In addition, Respondent indicated the settling ponds have not been dredged since at least 1999 and that pollutants were discharged from a location other than the permitted outfall.

8. On December 17, 2004, EPA issued Administrative Order No. CWA-04-2005-4751 to the Respondent for violations of NPDES Permit No. NC0054922, Part II, Section B, Proper Operation and Maintenance and Part II, Section B, Bypass Provisions. The Administrative Order required, in part, that the Respondent dredge the settling ponds.

9. On April 28, 2005, representatives of EPA conducted an inspection at the Morgan Mill Trout Farm. EPA representatives observed that dredged sediment from the settling ponds was placed on the bank of Ravens Fork. During a rainfall event, the sediment would have the potential of entering Ravens Fork. In addition, EPA representatives observed an overflow pipe in pond number 3 directly across the bank of Ravens Fork. EPA representatives could not determine the location of the outlet to the pipe.

10. The Morgan Mill Trout Farm has violated the NPDES Permit No. NC0054922, Part II, Section B, Proper Operation and Maintenance through improper maintenance of settling ponds. In addition, Morgan Mill Trout Farm has violated the bypass provision contained in Part II, Section B of the Permit by allowing an overflow pipe in pond number 3 which could potentially divert wastewater from the settling ponds, potentially allowing the wastewater to enter Raven Fork.

11. Based on the above, I find that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

#### ORDER

Based on the foregoing FINDINGS and pursuant to the authority of Sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, IT IS HEREBY ORDERED that the Respondent comply with the following requirements:

12. Within ten (10) days after the effective date of this ORDER, Respondent shall submit to EPA a plan to remove and properly dispose of all dredged sediment from around the settling ponds and on the banks of Ravens Fork. Within fifteen (15) days of EPA's approval of the plan, Respondent shall implement the plan.

13. Respondent shall inspect and perform maintenance (including dredging and proper disposal of dredged material) on the settling ponds regularly as needed for proper operation and to ensure all effluent flows through the treatment ponds as designed and is discharged through the permitted outfall. Respondent shall maintain records of all inspections and maintenance.

14. Sixty (60) days from the effective date of this Order, and every ninety (90) days thereafter, Respondent shall monitor and report to EPA sediment levels in each of the settling

ponds. This monitoring and reporting shall continue for one year following initial dredging.

15. Within ten (10) days from the effective date of this Order, the Respondent shall eliminate the overflow pipe from settling pond 3.

16. Within fifteen (15) days of completion of the tasks required in paragraphs 12, 13, 14 and 15 above, Respondent shall submit a letter to EPA certifying compliance.

17. Information required to be submitted by this Order shall be sent by certified mail, or its equivalent, to the following addressee:

Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
ATTN: David Parker

18. All submittals made in response to this Order must be accompanied by the following certification, which is to be signed by a responsible agency official in accordance with 40 C.F.R. Section 122.22:

"I certify under penalty of law that this document and all attachments were prepared by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

19. Failure to comply with the requirements of this Order shall constitute a violation of this Order and the CWA and may subject the Respondent to penalties as provided in Sections

309(d) or 309 (g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g).

20. This Order does not operate as an NPDES permit nor does it replace, modify or eliminate any requirement of the CWA or the NPDES Permit. Nothing contained herein shall be construed as prohibiting prosecution for the violations cited in this Order, for violations of the Order itself, or for any other violations of the CWA.

21. This Order shall become effective upon receipt.

6/9/05  
Date

James D. Giattina  
James D. Giattina, Director  
Water Management Division



United States Environmental Protection Agency  
Washington, D.C. 20460

## Water Compliance Inspection Report

Form Approved.  
OMB No. 2040-0057  
Approval expires 8-31-98

### Section A: National Data System Coding (i.e., PCS)

Transaction Code	NPDES	yr/mo/day	Inspection Type	Inspector	Fac Type
1 <u>N</u> 2 <u>5</u>	3 <u>N</u> <u>C</u> <u>0</u> <u>0</u> <u>5</u> <u>4</u> <u>9</u> <u>2</u> <u>2</u> <u>1</u>	12 <u>0</u> <u>5</u> <u>0</u> <u>4</u> <u>2</u> <u>8</u> <u>1</u> <u>7</u>	18 <u>C</u>	19 <u>R</u>	20 <u>2</u>
Remarks					
21					
Inspection Work Days	Facility Self-Monitoring Evaluation Rating	B1	QA	Reserved	
67 <u>  </u> <u>  </u> <u>  </u> 69	70 <u>  </u>	71 <u>  </u>	72 <u>  </u>	73 <u>  </u> 74	75 <u>  </u> <u>  </u> <u>  </u> <u>  </u> 80

### Section B: Facility Data

Name and Location of Facility Inspected (For industrial users discharging to POTW, also include POTW name and NPDES permit number)	Entry Time/Date	Permit Effective Date
Morgan Mill Trout Farm Big Cove Road Cherokee, NC	11:25am 10/28/05	10/01/04
	Exit Time/Date	Permit Expiration Date
	12:25pm 04/28/05	9/30/09
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s)	Other Facility Data	
Dale Owen P.O. Box 193 Balsam Grove, NC 28708	Operator contacted via phone on 4/27/05	
Name, Address of Responsible Official/Title/Phone and Fax Number	Contacted	
Dale Owen, Owner Morgan Mill Reports 828-421-2398	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

### Section C: Areas Evaluated During Inspection (Check only those areas evaluated)

<input checked="" type="checkbox"/> Permit	<input checked="" type="checkbox"/> Flow Measurement	<input checked="" type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> CSO/SSO (Sewer Overflow)
<input type="checkbox"/> Records/Reports	<input type="checkbox"/> Self-Monitoring Program	<input checked="" type="checkbox"/> Sludge Handling/Disposal	<input type="checkbox"/> Pollution Prevention
<input checked="" type="checkbox"/> Facility Site Review	<input checked="" type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> Multimedia
<input checked="" type="checkbox"/> Effluent/Receiving Waters	<input type="checkbox"/> Laboratory	<input type="checkbox"/> Storm Water	<input type="checkbox"/> Other:

### Section D: Summary of Findings/Comments (Attach additional sheets of narrative and checklists as necessary)

See attached narrative report

Name(s) and Signature(s) of Inspector(s)	Agency/Office/Phone and Fax Numbers	Date
Neimda M. Green	EPA R-140450-2977	
David Parker	EPA R-140450-2977	5/25/05
Signature of Management O A Reviewer	Agency/Office/Phone and Fax Numbers	Date
David Parker	EPA R-140450-2977	5/25/05

**Morgan Mill Trout Farm  
Cherokee, NC  
Compliance Evaluation Inspection  
April 28, 2005**

On April 28, 2005, Melinda Mallard Greene and David Parker conducted a compliance evaluation inspection at the Morgan Mill Trout Farm, Cherokee, North Carolina. A representative of the trout farm was not present during the inspection, however, credentials were presented to a farm employee named Buck upon entry. Mike Bolt, with the Tribal water quality laboratory, was present during part of the inspection. The inspection consisted of a process area overview, pretreatment system review and discussions with tribal personnel.

The facility is located off of Big Cove Road on the Eastern Band of Cherokee Reservation in Cherokee, North Carolina. Morgan Mill Trout Farm engages in the production of various species of trout for commercial purposes. The farm uses concrete raceways for raising the trout. Water for the raceways is diverted from Ravens Fork. Water from the raceways enters two (2) fishing ponds and four (4) sedimentation ponds prior to discharge into Ravens Fork.

#### Permit

EPA Region 4 issued NPDES permit No. NC0054922 to the facility for its discharge to surface waters. The current permit will expire on September 30, 2009. The permit requires the facility to comply with effluent limitations and narrative conditions, which include routine maintenance of the sedimentation ponds.

#### Facility Site Review

The process areas (raceways) were in general disrepair. Concrete had been washed, broken, or otherwise removed from raceway walls and pieces of plywood are being used to patch the walls. Housekeeping was poor with hoses, screens, etc., lying around the raceways. The pH adjustment pumps on influent raceway water did not appear to be operable.

The facility was issued Administrative Order (AO) No. CWA-04-2005-4751 on December 17, 2004, for violations of the permit and the Clean Water Act. The AO required the facility to dredge the sedimentation ponds. During the inspection, sediment from the ponds was piled on the bank of the ponds.

**REQUIREMENT:** This sediment was in close proximity to the river, such that during a heavy rainfall, it is likely that the sediment could flow into the river. The sediment must be stabilized or removed so that it will not flow into the river during rainfall events. The facility should investigate whether this nutrient rich sediment could be disposed of at the Tribal composting facility.

A white PVC overflow pipe was observed at the edge of pond 3 closest to the river. The inspectors could not determine where this pond discharged to.



**REQUIREMENT:** The current NPDES permit authorizes discharge from the outfall located at pond 4. The facility must determine where this overflow pipe discharges. Any discharge to the river at a point above the permitted outfall must be eliminated.

**Sampling**

Collection of samples for compliance purposes is done by the Tribe at the point of entry into Ravens Fork. Access to the sampling point is poor; the sampler must cross the river from the opposite side to gain access.



**ENCLOSURE D**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 21 2005

CERTIFIED MAIL 7004 1350 0000 1278 3340  
RETURN RECEIPT REQUESTED

Mr. A. Dale Owen, Operator  
Morgan Mill Resorts, Inc.  
P.O. Box 193  
Balsam Grove, NC 28708

SUBJ: Administrative Order No. CWA-04-2005-4805  
NPDES Permit No. NC0054922  
Morgan Mill Trout Farm

Dear Mr. Owen:

On April 28, 2005, representatives of the United States Environmental Protection Agency (EPA), Region 4, conducted a compliance evaluation inspection at Morgan Mill Trout Farm. An inspection report is enclosed which describes the observations made during the inspection. One or more deficiencies were noted during the inspection, therefore, pursuant to Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), as amended, the Director, Water Management Division, Region 4, EPA, has determined that the above named corporation is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. As a result, the Director has issued the enclosed Sections 308 and 309(a) Order. This Order supersedes Administrative Order No. CWA-04-2005-4779, which is hereby closed on the effective date of this Order.

This Order is issued to enforce existing requirements under the Act and therefore, does not replace, modify or eliminate any other requirement of the Act. Notwithstanding the issuance of this Sections 308 and 309(a) Order, the EPA retains the right to bring further enforcement action under Sections 309(d) or 309(g) of the Act, for the violations cited in this Order and for any other violation of the Act. Violations of the Act, including requirements contained in a National Pollutant Discharge Elimination System (NPDES) permit or a Sections 308 and 309(a) Order, remain subject to a civil penalty of up to \$32,500 per day for each violation pursuant to Sections 309(d) or 309(g), 33 U.S.C. §§ 1319(d) or 1319(g) of the Act. Such violations of the Act may also be subject to criminal action.

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* for your use and to assist you in understanding the compliance assistance resources and tools available to you. However, any decision to seek compliance assistance at this time does not relieve you of your obligation to EPA, does not create any new rights or defenses, and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission (SEC) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the SEC. To assist you, EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*.

Should you have any questions concerning the enclosed Order, please contact David Parker at (404) 562-9460.

Sincerely,



Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division

Enclosures

cc: Ms. Carmen McIntyre, Eastern Band of Cherokee Indians  
Mr. Alan Klimek, North Carolina Division of Water Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

Morgan Mill Resorts, Inc.	)	
MORGAN MILL TROUT FARM	)	ADMINISTRATIVE ORDER NO.
Cherokee, North Carolina	)	CWA-04-2005-4805
	)	
	)	
PROCEEDING UNDER SECTIONS 308	)	FINDINGS OF VIOLATION
AND 309(a) OF CLEAN WATER ACT,	)	AND
33 U.S.C. §§ 1318 and 1319 (a); in Re	)	ORDER FOR COMPLIANCE
NPDES Permit No. NC0054922	)	

STATUTORY AUTHORITY

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. Section 1318 and 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and re-delegated by the Regional Administrator to the Director of the Water Management Division.

FINDINGS

1. Morgan Mill Resorts, Inc. is a corporation doing business in the State of North Carolina and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362.
2. The objective of the CWA, as set forth in Section 101(a) of the CWA, 33 U.S.C. § 1251(a) is to restore and maintain the chemical, physical, and biological integrity of the nation's water.

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into the navigable waters of the United States, except in compliance with an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

4. At all times relevant to this Matter, Morgan Mill Resorts, Inc. (Respondent) operated Morgan Mill Trout Farm, which is located on Big Cove Road, Cherokee, Swain County, North Carolina. The trout farm discharges treated wastewater, which contains pollutants, into Raven Fork, navigable waters of the United States, as defined in Section 502 (7) of the Act, 33 U.S.C. § 1562(7).

5. On October 8, 1999, EPA Region 4 issued to Morgan Mill Trout Farm, NPDES Permit No. NC0054922 (the Permit) authorizing a discharge from the Morgan Mill Trout Farm to Raven Fork in compliance with the terms, conditions, and requirements of the permit, with an expiration date of September 30, 2004. The Permit was reissued by EPA on September 22, 2004, with an expiration date of September 30, 2009.

6. On May 18, 2004, personnel from the EPA visited the Morgan Mill Trout Farm and observed excess sediment in the Morgan Mill Trout Farm's settling ponds and breaks in the settling pond walls, allowing pollutants to enter into Raven Fork from a location other than the permitted outfall. Part II, Section B, Proper Operation and Maintenance of the permit requires that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee to achieve compliance with the conditions of the permit. According to Part II, Section B, Bypass Treatment Facilities d(1),



"Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless: (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and (c) The permittee submitted notices as required under paragraph (c) of this section."

7. Based on observations made by personnel from EPA on May 18, 2004, a CWA Section 308 Information Request was sent to Respondent on June 24, 2004. The response to the CWA Section 308 Information Request received from Respondent confirmed that Morgan Mill Trout Farm created manmade breaks in the settling ponds to allow pollutants to discharge to Raven Fork from a location other than the permitted outfall. In addition, Respondent indicated the settling ponds had not been dredged since at least 1999 and that pollutants were discharged from a location other than the permitted outfall.

8. On December 17, 2004, EPA issued Administrative Order No. CWA-04-2005-4751 to the Respondent for violations of NPDES Permit No. NC0054922, Part II, Section B, Proper Operation and Maintenance and Part II, Section B, Bypass Provisions. The Administrative Order required, in part, that the Respondent dredge the settling ponds.

9. On April 28, 2005, representatives of EPA conducted an inspection at the Morgan Mill Trout Farm. EPA representatives observed that dredged sediment from the settling ponds was placed on the bank of Ravens Fork. During a rainfall event, the sediment would have the potential of entering Ravens Fork. In addition, EPA representatives observed an overflow pipe

in pond number 3 directly across the bank of Ravens Fork. EPA representatives could not determine the location of the outlet to the pipe.

10. On June 9, 2005, EPA issued Administrative Order No. CWA-04-2005-4779 to the Respondent for violations of NPDES Permit No. NC0054922, Part II, Section B, Proper Operation and Maintenance and Part II, Section B, Bypass Provisions. The Administrative Order required, in part, that the Respondent submit a plan to EPA for removal of the sediment that was placed along the bank of Raven's Fork. EPA and the Respondent have agreed on a plan of action to stabilize the sediment, which is incorporated into this Administrative Order.

11. The Morgan Mill Trout Farm has violated the NPDES Permit No. NC0054922, Part II, Section B, Proper Operation and Maintenance through improper maintenance of settling ponds. In addition, Morgan Mill Trout Farm has violated the bypass provision contained in Part II, Section B of the Permit by allowing an overflow pipe in pond number 3 which could potentially divert wastewater from the settling ponds, potentially allowing the wastewater to enter Raven Fork.

12. Based on the above, I find that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

#### ORDER

Based on the foregoing FINDINGS and pursuant to the authority of Sections 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, IT IS HEREBY ORDERED that the Respondent comply with the following requirements:

13. Within two (2) days of the effective date of this ORDER, Respondent shall have properly implemented effective Best Management Practices (BMPs), such as silt fencing, to the maximum extent practicable, along the bank of Raven Fork to prevent the runoff of sediment into Raven Fork.

14. Respondent shall inspect and maintain the implemented BMPs along Raven Fork to ensure that the BMPs are properly implemented and functioning on a weekly basis beginning with the effective date of this Order. Respondent shall maintain written records of all inspections and maintenance performed for purposes of this paragraph, documenting the date of the inspection, the amount of rainfall received during the week, describing any BMP deficiencies and maintenance needs, the actions taken to correct any deficiencies, and any maintenance performed.

15. In the event there is a discharge of pollutants from any location other than the permitted outfall, the Respondent shall immediately notify EPA and take all reasonable steps to prevent and/or minimize, to the maximum extent practicable, any discharge. This shall include the effective implementation of additional or more effective BMPs along Raven Fork. Respondent's notification to EPA shall include a description of the location of the discharge, the cause of the discharge, how long the discharge occurred, the approximate volume of discharge, and the steps taken by Respondent to cease or minimize the discharge.

16. Respondent shall inspect and perform maintenance (including dredging and proper disposal of dredged material) on the settling ponds regularly as needed for proper operation and to ensure all effluent flows through the treatment ponds as designed and is discharged through

the permitted outfall. Respondent shall maintain written records of all inspections and maintenance performed for purposes of this paragraph.

17. Sixty (60) days from the effective date of this Order, and every ninety (90) days thereafter, Respondent shall monitor and report to EPA sediment levels in each of the settling ponds. This monitoring and reporting shall continue for one year following the initial dredging which occurred in April 2005.

18. No later than October 15, 2005, the Respondent shall grade the sediment along Raven Fork and completely cover the graded area with road bed gravel or material of similar grade. The Respondent shall continue to maintain the implemented BMPs along Raven Fork.

19. Within fifteen (15) days of completion of the tasks required in paragraphs 13 and 18 above, Respondent shall submit a letter to EPA certifying compliance.

20. Information required to be submitted by this Order shall be sent by certified mail, or its equivalent, to the following addressee:

Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
ATTN: David Parker

21. All submittals made in response to this Order must be accompanied by the following certification, which is to be signed by a responsible agency official in accordance with 40 C.F.R. Section 122.22:

"I certify under penalty of law that this document and all attachments were prepared my under direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

22. Failure to comply with the requirements of this Order shall constitute a violation of this Order and the CWA and may subject the Respondent to penalties as provided in Sections 309(d) or 309 (g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g).

23. This Order does not operate as an NPDES permit nor does it replace, modify or eliminate any requirement of the CWA or the NPDES Permit. Nothing contained herein shall be construed as prohibiting prosecution for the violations cited in this Order, for violations of the Order itself, or for any other violations of the CWA.

24. This Order shall become effective upon receipt.

SEP 21 2005

Date



James D. Giattina, Director  
Water Management Division

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## ENCLOSURE E

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

APR 28 2006

**CERTIFIED MAIL** 7005 2570 0001 4535 5272  
**RETURN RECEIPT REQUESTED**

Dale Owen, President  
Morgan Mill Resorts, Inc.  
P.O. Box 193  
Balsam Grove, NC 28708

SUBJ: Compliance Evaluation Inspection  
Morgan Mill Trout Farm WWTP  
NPDES Permit No. NC0054992

Dear Mr. Owen:

Enclosed please find a copy of the inspection report for the National Pollutant Discharge Elimination System (NPDES) inspection conducted on March 23, 2006, at the referenced facility by the U.S. Environmental Protection Agency (EPA). Based on the inspection, this office offers the following comments and requests a response within thirty (30) days of receipt of this letter:

1. The facility is subject to the EPA Administrative Order (AO) No. CWA-04-2005-4805, and requires silt fencing along the banks of Raven Fork River. During the time of inspection, it was observed that the silt fencing was located along only the upstream ponds. There was no silt fencing along the lower ponds.
2. The AO requires proper maintenance of the settling ponds, including dredging and proper disposal of dredge material. It appears that the lower ponds were not maintained.
3. The AO requires grading and completely cover the graded area with road bed gravel or similar material and continue to maintain Best Management Practices (BMP) along Raven Fork. It appears that this provision has not been completed.
4. The effluent discharge point was nearly inaccessible. A pathway along the settling ponds and to the outfall should be constructed and maintained.
5. Sidewalls of the settling ponds were overgrown with vegetation. In addition, flows from the lower ponds were encroaching Big Cove Road.
6. Facility site records were not available at the time of inspection. Please provide examples of the weekly records that the implemented BMP were inspected and the maintenance performed; records of inspections and maintenance performed on the settling ponds; and pond sediment level readings.

7. At the time of inspection, the flow measuring method could not be determined. Please describe the methodology and an example of records of the quantity of flow, as required by the NPDES permit.
8. Discharge Monitoring Reports must be reported to EPA on a monthly basis as outlined in Part III(A) of the NPDES permit.

If you have any questions or comments regarding the inspection findings, please contact Mr. Michael Horn at (404) 562-9748 or at [horn.michael@epa.gov](mailto:horn.michael@epa.gov).

Sincerely,



David Y. Parker, Chief  
Eastern Enforcement Section  
Water Programs Enforcement Branch  
Water Management Division

Enclosure

cc: Carmen Horn-McIntyre, EBCI  
Mike Bolt, EBCI



United States Environmental Protection Agency  
Washington, D.C. 20460

## Water Compliance Inspection Report

Form Approved  
OMB No. 2040-0057  
Approval Expires  
8-31-98

### Section A: National Data System Coding (i.e., PCS)

Transaction Code	NPDES	yr/mo/day	Inspection Type	Inspector	Facility Type
N	NC0054992	06/03/23	C	R	4
Remarks					
Inspection Work Days	Facility Self Monitoring Evaluation Rating		B1	QA	-----Reserved-----

### Section B: Facility Data

Name and Location of Facility Inspected	Entry Time/Date	Permit Effective Date
Morgan Mill Trout Farm	03:25P/03-23-2006	10/01/2004
10245 Big Cove Road	Exit Time/Date:	Permit Expiration Date:
Cherokee, NC 28719	04:24P/03-23-2006	09/30/2009
Names of On-Site Representative(s)/Title(s)/Phone and Fax No's	Other Facility Data	
Dale Owen, Morgan Mill Resorts, Inc. President		
828-421-2398		
Name, Address of Responsible Official/Title/Phone and Fax No's		
Dale Owen, Morgan Mill Resorts, Inc. President		
828-421-2398		

### Section C: Areas Evaluated During Inspection (Check only those areas evaluated)

X	Permit		Flow Measurement		Operations & Maintenance		CSO/SSO (Sewer Overflow)
X	Records/Reports	X	Self-Monitoring Program		Sludge Handling/Disposal		Pollution Prevention
X	Facility Site Review	X	Compliance Schedules		Pretreatment		Multimedia
X	Effluent/Receiving Waters		Laboratory		Storm Water		Other Sampling

### Section D: Summary of Findings/Comments

#### SUMMARY/DATA INTEGRITY

See attached.

Names and Signatures of Inspectors	Agency/Office/Phone and Fax Numbers	Date
 Michael Horn	EPA: 404-562-9748	March 23, 2006
Signature of Reviewer	Agency/Office	Date
 David Parker, Chief	Eastern Enforcement Section/WPEB/WMD/EPA	4/28/06

**Compliance Evaluation Inspection  
Morgan Mill Trout Farm  
Morgan Mill Resorts, Inc.  
Cherokee, NC  
NPDES No. NC0054992**

**Introduction:**

On March 23, 2006, personnel from the United States Environmental Protection Agency, (EPA) Region 4, conducted a Compliance Evaluation Inspection (CEI) at the Morgan Mill Trout Farm wastewater treatment plant (WWTP), operated by Morgan Mill Resorts, Inc. (Company). The purpose of the CEI was to evaluate the Company's National Pollutant Discharge Elimination System (NPDES) program.

The following individuals participated in the field inspection:

<u>Name</u>	<u>Organization</u>	<u>Telephone</u>
Mike Horn	EPA	404-562-9748
Mike Bolt	Eastern Band of Cherokee Indians (EBCI)	828-497-2715

The Company operates the Morgan Mill Trout Farm and the associated WWTP. The facility is a concentrated aquatic animal production of trout and treats the wastewater through a series of settling ponds.

**Permit:**

The WWTP is permitted under the NPDES Permit Number NC0054992, and was effective on October 1, 2004, with an expiration date of September 30, 2009.

The facility is also subject to the terms and conditions of Administrative Order (AO) No. CWA-04-2005-4805, including requirements to implement storm water best management practices (BMP), and to maintain the settling ponds.

**Rating: satisfactory**

**Records/Reports:**

At the time of inspection, the facility was closed to the general public and only staff personnel were present. Operations and maintenance records, flow records, BMP inspection and maintenance records were not available for review. Records for NPDES sampling chain of custody records, and analytical results are maintained by EBCI personnel and were reviewed at the Cherokee WWTP.

**Rating: not applicable**

**Self Monitoring Program:**

Grab type samples are collected by the EBCI personnel. NPDES analyses are conducted by a commercial laboratory, except for in-situ measurements. The EBCI completes the

Discharge Monitoring Reports (DMRs) for the Company and submits to EPA on a quarterly basis. Under the NPDES Permit Part III(A) provision, the DMRs are required to be submitted monthly.

Effluent samples are collected just prior to discharge into Raven Fork River. However, the effluent sample point is inaccessible at times, and is collected by crossing Raven Fork River from the opposite bank.

**Rating: unsatisfactory**

**Site Review:**

The Company operates the Morgan Mill Trout Farm WWTP. The facility is a concentrated aquatic animal production of trout and treats the wastewater through a series of settling ponds.

The Company produces approximately 20,000 pounds per month and the feed rate for the fish is 24,000 pounds per month.

Flows from the river are diverted to the farm's raceways. The water is treated with sodium hydroxide for pH adjustment. Flow measurements could not be determined at the time of inspection.

Wastewater is treated through a series of settling ponds. The ponds are unlined and sidewalls are overgrown with vegetation. Silt fencing is located between Raven Fork River and upstream ponds. Upstream ponds were dredged and a side pathway parallel to the silt fence was graveled. Downstream ponds did not appear to have been dredged. No silt fencing existed along the downstream ponds. In addition, it appears that the downstream pond flows are encroaching Big Cove Road.

The discharge point was difficult to access.

The WWTP effluent discharges into Raven Fork River. At the time of inspection, the outfall discharge was free of floating solids, visible foam and sheen.

**Rating: unsatisfactory**

**Laboratory:**

NPDES analyses are conducted by a commercial laboratory:

Pace Analytical Services Inc.  
2225 Riverside Drive  
Asheville, NC 28804  
828-254-7176

The commercial laboratory was not evaluated.

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<sup>1</sup> Ref.: In response to June 24, 2004 EPA Section 308 Information Request Letter

**Rating: not applicable**

**Compliance Schedule:**

The facility is under AO No. CWA-04-2005-4805. In part, the AO requires the Company to:

1. Implement BMP, such as silt fencing along the bank of Raven Fork;
2. Conduct weekly inspections and maintain the implemented BMP and maintain written records of inspections and maintenance performed;
3. Inspect and perform maintenance of the settling ponds;
4. Monitor and report to EPA sediment levels in the settling ponds every 90 days;
5. No later than October 15, 2005, grade and cover area along Raven Fork with road gravel or with similar material.

## ENCLOSURE F









UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 4 2007

**CERTIFIED MAIL** 7005 3110 0003 6266 3562  
**RETURN RECEIPT REQUESTED**

Dale Owen, President  
Morgan Mill Resorts, Inc.  
P.O. Box 193  
Balsam Grove, NC 28708

SUBJ: Compliance Evaluation Inspection  
Morgan Mill Trout Farm WWTP  
NPDES Permit No. NC0054992


Dear Mr. Owen:

Enclosed please find a copy of the inspection report for the National Pollutant Discharge Elimination System (NPDES) inspection conducted on August 29, 2007, at the referenced facility, by the U.S. Environmental Protection Agency (EPA).

Based on the inspection, you are deficient in the maintenance and operations of the settling ponds as required under Part IA(9) and Part IIB(1) of your NPDES permit, and Administrative Order No. CWA-04-2005-4805. Please provide this office with actions your facility has taken or plans to take to correct this deficiency within ten (10) days of receipt of this letter.

If you have any questions or comments regarding the inspection findings, please contact Mr. Bruce Henry at (404) 562-9754 or Mr. Michael Hom at (404) 562-9748.

Sincerely,

  
David Y. Parker, Chief  
Eastern Enforcement Section  
Water Programs Enforcement Branch  
Water Management Division

Enclosure

cc: Forrest Parker, EBCI  
Mike Bolt, EBCI

**EPA**United States Environmental Protection Agency  
Washington, D.C. 20460**Water Compliance Inspection Report**Form Approved  
OMB No.2040-0057  
Approval Expires  
8-31-98**Section A: National Data System Coding (i.e., PCS)**

Transaction Code	NPDES	yr/mo/day	Inspection Type	Inspector	Facility Type
N	NC0054992	07/08/29	C	R	4

Remarks

Inspection Work Days	Facility Self Monitoring Evaluation Rating	B1	QA	-----Reserved-----
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**Section B: Facility Data**

Name and Location of Facility Inspected Morgan Mill Trout Farm 10245 Big Cove Road Cherokee, NC 28719	Entry Time/Date 02:45P/08-29-2007	Permit Effective Date 10/01/2004
	Exit Time/Date: 03:30P/08-29-2007	Permit Expiration Date: 09/30/2009

Names of On-Site Representative(s)/Title(s)/Phone and Fax No's  
Dale Owen, Morgan Mill Resorts, Inc. President  
828-421-2398

Other Facility Data

Name, Address of Responsible Official/Title/Phone and Fax No's  
Dale Owen, Morgan Mill Resorts, Inc. President  
828-421-2398**Section C: Areas Evaluated During Inspection (Check only those areas evaluated)**

<input checked="" type="checkbox"/> Permit	<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> CSO/SSO (Sewer Overflow)
<input type="checkbox"/> Records/Reports	<input checked="" type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Sludge Handling/Disposal	<input type="checkbox"/> Pollution Prevention
<input checked="" type="checkbox"/> Facility Site Review	<input checked="" type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> Multimedia
<input checked="" type="checkbox"/> Effluent Receiving Waters	<input type="checkbox"/> Laboratory	<input type="checkbox"/> Storm Water	<input type="checkbox"/> Other Sampling

**Section D: Summary of Findings/Comments****SUMMARY/DATA INTEGRITY**

See attached.

Names and Signatures of Inspectors  Bruce Henry	Agency/Office/Phone and Fax Numbers EPA: 404-562-9754	Date 10/2/07
Signature of Reviewer  David Parker, Chief	Agency/Office Eastern Enforcement Section/WPEB/WMD/EPA	Date 10/3/07

Morgan Mill Trout Farm  
Cherokee, NC  
Compliance Evaluation Inspection  
August 29, 2007

On August 29, 2007, Bruce Henry conducted a compliance evaluation inspection at the Morgan Mill Trout Farm, Cherokee, North Carolina. A representative of the trout farm was not present during the inspection; however, credentials were presented to a farm employee upon entry. The inspection consisted of a process area overview, pretreatment system review and discussions with tribal personnel.

The facility is located off of Big Cove Road on the Eastern Band of Cherokee Reservation in Cherokee, North Carolina. Morgan Mill Trout Farm engages in the production of various species of trout for commercial purposes. The farm uses concrete raceways for raising the trout. Water for the raceways is diverted from Ravens Fork

The following individuals participated in the field inspection:

<u>Name</u>	<u>Organization</u>	<u>Telephone</u>
Bruce Henry	EPA	404-562-9754
Mike Bolt	Eastern Band of Cherokee Indians (EBCI)	828-497-2715

The Company operates the Morgan Mill Trout Farm and the associated WWTP. The facility is a concentrated aquatic animal production of trout and treats the wastewater through a series of settling ponds.

**Permit:**

The WWTP is permitted under the NPDES Permit Number NC0054992, and was effective on October 1, 2004, with an expiration date of September 30, 2009.

The facility is also subject to the terms and conditions of Administrative Order (AO) No. CWA-04-2005-4805, including requirements to implement storm water best management practices, and to maintain the settling ponds.

**Facility Site Review:**

At the time of the visit, the entire flow of Raven Fork was being diverted through the facility. The facility had experienced a major fish kill approximately two weeks prior to the inspection. Fish at the facility were being treated with formaldehyde for two fish diseases.

Due to heavy growth of brush, it was not possible to inspect the "ponds" below the raceways. There were no large fish in the facility, only fingerlings for next year's crop.

The facility effluent discharges into Raven Fork River. At the time of inspection, visible foam was observed in the outfall and downstream at the confluence with Straight Fork.



## ENCLOSURE G

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
SAM NUNN  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA GEORGIA 30303-8900

AUG 3 2010

CERTIFIED MAIL 7009 1680 0002 0141 2586  
RETURN RECEIPT REQUESTED

Mr. Dale Owen  
Morgan Mill at Cherokee Trout Farm  
Post Office Box 193  
Balsam Grove, North Carolina 28708

Subject: NPDES Permit No. NC0054992

Dear Mr. Owen:

In accordance with Part I.B of the referenced National Pollutant Discharge Elimination System (NPDES) permit (effective on December 01, 2009), the permittee must certify that a Best Management Practices (BMP) plan has been developed and implemented within 90 days of the effective date of the NPDES permit. In addition, the referenced NPDES permit requires that you record the facility's monthly feed rate, in pounds, and report quarterly.

To date, this office has not received a copy of your BMP plan and certification statement, nor the feed rates from December 2009 through March 2010. Please submit the above within 60 days of receipt of this letter.

For your information, BMP plan development, certification, and other Concentrated Aquatic Animal Production requirements can be found at:  
<http://www.epa.gov/guide/aquaculture/guidance/index.html>.

If you have any questions, please contact Mr. Michael Hom, Environmental Engineer, at (404) 562-9748 or at [hom.michael@epa.gov](mailto:hom.michael@epa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Christopher Plymale".

Christopher L. Plymale, Chief  
East NPDES Enforcement Section  
Clean Water Enforcement Branch

cc: Michael Bolt  
Eastern Band of Cherokee Indians





## ENCLOSURE H





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
51 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 31 2011

CERTIFIED MAIL 7010 1060 0002 1704 6650  
RETURN RECEIPT REQUESTED

Mr. Aubrey Dale Owen  
President, Morgan Mill Resorts, Inc.  
Post Office Box 193  
Balsam Grove, North Carolina 28708

Re: Administrative Order No. CWA-04-2011-4759  
Morgan Mill at Cherokee Trout Farm  
NPDES NC0054992

Dear Mr. Owen:

Pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), the Director of the Water Protection Division, the U.S. Environmental Protection Agency (EPA) Region 4, has determined that the above named facility is in violation of Sections 301 and 402 of the CWA. As a result, the Director has issued the enclosed Administrative Order (AO).

This AO does not replace, modify or eliminate any other requirement of the CWA or a National Pollutant Discharge Elimination System (NPDES) permit. Notwithstanding the issuance of this AO, EPA retains the right to bring further enforcement action under Sections 309(d) or 309(g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g), for the violations cited therein or for any other violation of the CWA. Violations of the CWA, including requirements contained in a NPDES permit or an AO issued under Section 309(a)(5) of the CWA, 33 U.S.C. § 1319(a), remain subject to a civil penalty of up to \$37,500 per day for each violation, pursuant to Sections 309(d) or 309(g) of the CWA, 33 U.S.C. §§ 1319(d) or 1319(g), as amended by the *Civil Monetary Penalty Inflation Adjustment Rule*, 73 Fed. Reg. 75340 (December 11, 2008). Such violations may also be subject to criminal penalties pursuant to Section 309(c) of the CWA, 33 U.S.C. § 1319(c).

Also enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* which may assist you in understanding the compliance assistance resources and tools available to the facility. However, any decision to seek compliance assistance at this time does not relieve the Company of its obligations to EPA, does not create any new rights or defenses, and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission (SEC) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the SEC. To assist you, EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*.

Should you have any questions concerning the requirements contained in the enclosed AO, please contact Mr. Michael Horn at (404) 562-9748, or you may submit written comments to the address on the letterhead. Legal inquiries should be directed to Mr. Wayne Lee, Assistant Regional Counsel, at (404) 562-9523.

Sincerely,

A handwritten signature in black ink that reads "Molly Davis". The signature is written in a cursive, flowing style.

Molly Davis, Acting Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosures (3)

cc: Ms. Coleen H. Sullins  
NCDENR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:

) ADMINISTRATIVE ORDER

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Morgan Mill Resorts, Inc.

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Morgan Mill at Cherokee Trout Farm

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Cherokee, North Carolina

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NPDES Permit No. NC0054992

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**I. STATUTORY AUTHORITY**

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency ("EPA") finds that any person is in violation of any condition or limitation which implements, *inter alia*, Section 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that EPA determines to be reasonable.

2. The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the EPA by Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), as amended. This authority has been delegated to the Regional Administrator of EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Protection Division, EPA, Region 4.

**II. FINDINGS**

3. Morgan Mill Resorts, Inc. ("Respondent"), is a corporation doing business in the State of North Carolina and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent operated a concentrated aquatic animal production facility, the Morgan Mill at Cherokee Trout Farm ("Facility"), located at 10285 Big Cove Road, Eastern Band of Cherokee Indians Qualla Boundary, Cherokee, Swain County, North Carolina. The Facility discharges treated raceway wastewater, which contains pollutants, into Raven Fork River, "navigable waters" of the United States, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National

Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions.

7. EPA reissued NPDES Permit No. NC0054992 ("Permit") to the Facility for the discharge of treated raceway wastewater. The Permit's effective date is December 01, 2009 and it will expire on November 30, 2014.

8. Part I.B of the Permit requires that the Respondent certifies that a Best Management Practices ("BMP") Plan has been developed and is being implemented. The certification must be submitted to EPA within 90 days of the effective date of the permit.

9. On August 03, 2010, EPA notified the Respondent by certified letter, return receipt requested, that the BMP Plan certification was not received, and requested a copy of the BMP Plan and certification. According to the return receipt, Respondent received the letter on August 17, 2010. To date, EPA has not received a response from the Respondent.

10. Therefore, EPA, Region 4 has determined that Respondent has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, by failing to comply with the requirement of Part I.B of the Permit.

### **III. ORDER**

11. Based on the foregoing Findings and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), IT IS HEREBY ORDERED that Respondent comply with the following requirements:

- a. Within 10 days of receipt of this Order, Respondent shall submit a copy of the BMP Plan, and certification of development and implementation of the BMP Plan in accordance with Part I.B of the Permit.
- b. In the event that a BMP Plan has not been developed, Respondent shall develop and implement a BMP Plan, in accordance with Part I.B of the Permit and certify its implementation within 60 days of receipt of this Order.
- c. The BMP Plan shall include, but not limited to, under Part I.B.4 - Operational Requirements, the requirement for safe accessibility to all treatment ponds and to outfall serial number 001 from the Facility's property.

- d. The BMP Plan shall include, but not be limited to, under Part I.B.4 - Operational Requirements, the requirement for regular and routine cleaning of the treatment ponds, and the regular and routine maintenance of the treatment ponds such that ponds do not encroach upon the adjacent right of way of Big Cove Road.

12. Respondent must submit a request for any extension of time necessary to comply with the requirements of this Order in writing, and must include the reasons for the extension request and a date when compliance will be achieved. Any extension granted must be made by EPA in writing.

13. All reports, notifications, documentation and submittals required by this Order shall be signed by a duly authorized representative of the Respondent as specified by 40 CFR §§ 122.22(b)(2) and (d) and shall include the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

14. All reports, notifications, documentation and submittals required by this Order shall be sent by certified mail or its equivalent to the following address:

Molly Davis, Acting Branch Chief  
Clean Water Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
ATTN: Michael Hom, Environmental Engineer

#### **IV. GENERAL PROVISIONS**

15. Failure to comply with the requirements herein shall constitute a violation of this Order and the CWA, and may subject Respondent to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

16. This Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Compliance with this

Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

17. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which this Order is based, or for Respondent's violation of any federal or state statute, regulation or permit.

18. Nothing in this Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this Order. The United States does not waive any right to bring an enforcement action against Respondent for violations of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

19. This Order applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.


20. Any change in the Respondent's legal status with respect to the Facility, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this Order.

21. The provisions of this Order shall be deemed satisfied upon a determination by EPA that Respondent has fully completed and implemented the actions required by this Order.

#### V. EFFECTIVE DATE

22. The effective date of this Order shall be the date upon which it is received by Respondent.

**IT IS SO ORDERED,  
BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

  
James D. Giattina  
Director  
Water Protection Division

Date: 3/3/11



Should you have any questions concerning the requirements contained in the enclosed AO, please contact Mr. Michael Hom at (404) 562-9748, or you may submit written comments to the address on the letterhead. Legal inquiries should be directed to Mr. Wayne Lee, Assistant Regional Counsel, at (404) 562-9523.

Sincerely,

Molly Davis, Acting Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosures

1. Administrative Order No. CWA-04-2011-4759
2. U.S. EPA Small Business Resources-Information Sheet
3. Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings

cc: North Carolina Department of Environment and Natural Resources

bc: EAD/OWLS-Attorney/T. Shirley-Wright

~~MD~~ 2/23/11  
~~MD~~ HOM ~~MD~~ MATTOX ~~MD~~ W. LEE ~~MD~~ PLYMALE ~~MD~~ A. JONES  
~~MD~~ DAVIS ~~MD~~ *Grathra* ~~MD~~ *3/28/11*  
~~MD~~ 3/31 ~~MD~~ 3/31/11 ~~MD~~ 2/23/11 ~~MD~~ 3/28/11

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## ENCLOSURE I





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**JUN 17 2011**

**CERTIFIED MAIL 7003 1680 0001 0750 4770**  
**RETURN RECEIPT REQUESTED**

Mr. Aubrey Dale Owen, President  
Morgan Mill Resorts, Inc.  
Post Office Box 193  
Balsam Grove, North Carolina 28708

Re: Compliance Evaluation Inspection  
Morgan Mill at Cherokee Trout Farm NPDES No. NC0054992

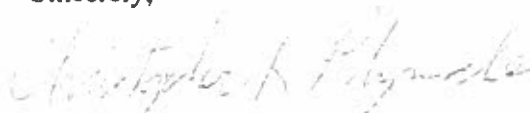
Dear Mr. Owen:

Enclosed please find a copy of the inspection report for the National Pollutant Discharge Elimination System (NPDES) inspection conducted at the Morgan Mill at Cherokee Trout Farm on May 11, 2011, by the U.S. Environmental Protection Agency, Region 4. Based on the inspection and other observations, this office offers the following comments and recommendations and requests a response within ten (10) days of receipt of this letter:

1. An electronic copy of the EPA *Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category*, EPA-821-B-05-001, March 2006, was provided to you for your use. Appendix F of this document is an example of the Best Management Practice Plan certification form, of which a copy is enclosed. Please complete this form and submit a copy to this office. This will satisfy Paragraph 11(a) of Administrative Order No. CWA-04-2011-4759.
2. Administrative Order No. CWA-04-2004-4805 requires a certification statement that the area between the treatment and downstream ponds and Raven Fork River is graded and stabilized to prevent any pond dredged material runoff into the Raven Fork River. Please provide the following certification statement that this work was done:  
  
"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
3. Provide access to the outfall by repairing the downstream pond berm off of Big Cove Road and a pathway to the permitted outfall for the purpose of effluent sample collection. Provide a timetable in which this access will be constructed. At the time of inspection, you verbally indicated that this would be complete within two weeks.

I appreciate the time and professional courtesy extended by you. Please contact Mr. Michael Hom at (404) 562-9748 or at [hom.michael@epa.gov](mailto:hom.michael@epa.gov), if you have any questions or comments regarding the inspection findings.

Sincerely,



Christopher L. Plymale, Chief  
Stormwater and Residual Enforcement Section  
Clean Water Enforcement Branch

Enclosures

cc: Jamie Long, Eastern Band of Cherokee Indians  
Mike Bolt, Eastern Band of Cherokee Indians

**EPA**United States Environmental Protection Agency  
Washington, D.C. 20460**Water Compliance Inspection Report****Section A: National Data System Coding (i.e., PCS)**

<b>Transaction Code</b>	<b>NPDES</b>	<b>yr/mo/day</b>	<b>Inspection Type</b>	<b>Inspector</b>	<b>Facility Type</b>
N 5	NC0054992	11/05/11	C	R	4
<b>Remarks</b>					
<b>Inspection Work Days</b>	<b>Facility Self Monitoring Evaluation Rating</b>		<b>BI</b>	<b>QA</b>	<b>-----Reserved-----</b>


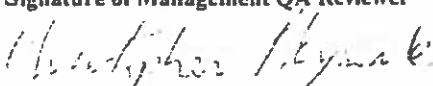
**Section B: Facility Data**

<b>Name and Location of Facility Inspected (For industrial users discharging to POTW, also include POTW name and NPDES permit number)</b> Morgan Mill at Cherokee Trout Farm 10285 Big Cove Rd Cherokee, NC 28719	<b>Entry Time/Date</b> 10:10AM/05-11-2011	<b>Permit Effective Date</b> 12/01/2009
	<b>Exit Time/Date</b> 11:03AM/05-11-2011	<b>Permit Expiration Date</b> 11/30/2014
<b>Names of On-Site Representative(s)/Title(s)/Phone and Fax No's</b> Aubrey Dale Owen, Morgan Mill Resorts, Inc. President, 828-421-2398		<b>Other Facility Data (e.g., SIC NAICS, and other descriptive information)</b>
<b>Name, Address of Responsible Official/Title/Phone and Fax No's</b> Aubrey Dale Owen, Morgan Mill Resorts, Inc. President, 828-421-2398 Robert Blankenship Sr., Owner, 704-497-9709		
		<b>Contacted</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**Section C: Areas Evaluated During Inspection (Check only those areas evaluated)**

<input checked="" type="checkbox"/> Permit	<input checked="" type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> MS4
<input checked="" type="checkbox"/> Records/Reports	<input type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pollution Prevention	
<input checked="" type="checkbox"/> Facility Site Review	<input type="checkbox"/> Laboratory	<input type="checkbox"/> Storm Water	
<input checked="" type="checkbox"/> Effluent/Receiving Waters	<input type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> Combined Sewer Overflow	
<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Sludge Handling/Disposal	<input type="checkbox"/> Sanitary Sewer Overflow	

**Section D: Summary of Findings/Comments***(Attach additional sheets of narrative and checklists, including Single Event Violation codes, as necessary)*

<b>SEV Codes</b>	<b>SEV Description</b>	
<b>Name(s) and Signature(s) of Inspector(s)</b>  Michael Hom	<b>Agency/Office/Phone and Fax Numbers</b> EPA; 404-562-9748	<b>Date</b> 05-11-2011
<b>Signature of Management QA Reviewer</b>  Christopher Plymale, Chief	<b>Agency/Office/Phone and Fax Numbers</b> Stormwater & Residual Enf Section/CWEB/WPD/EPA	<b>Date</b> 6/16/11

**Compliance Evaluation Inspection  
Morgan Mill at Cherokee Trout Farm  
Cherokee, NC  
NPDES Permit No. NC0054992**

**Introduction:**

On May 11, 2011, personnel from the United States Environmental Protection Agency, (EPA) Region 4, conducted a Compliance Evaluation Inspection (CEI) at the Morgan Mill at Cherokee Trout Farm. The purpose of the CEI was to evaluate the facility's National Pollutant Discharge Elimination System (NPDES) program.

The following individuals participated in the field inspection:

<u>Name</u>	<u>Organization</u>	<u>Telephone</u>
Mike Horn	EPA	404-562-9748
Mike Bolt	Eastern Band of Cherokee Indians (EBCI)	828-497-2715
Dale Owen	Morgan Mill Resorts, Inc.	828-421-2398

The Morgan Mill at Cherokee Trout Farm is a concentrated aquatic animal production (CAAP) cold water trout facility with a capacity of 250,000 pounds inventory. The facility is operated by Morgan Mill Resorts, Inc.

**Permit:**

The facility is permitted under the NPDES Permit Number NC0054992, and was effective on December 01, 2009, with an expiration date of November 30, 2014.

The facility is also subject to EPA Administrative Order (AO) No. CWA-04-2005-4805 and CWA-04-2011-4759. AO CWA-04-2005-4805 was issued September 21, 2005 to the operator for improper operations and maintenance.

AO CWA-04-2011-4759 was issued March 31, 2011 to the operator for failure to notify and certify to EPA that a Best Management Practice (BMP) plan has been implemented in accordance with the facility's NPDES permit.

**Rating: satisfactory**

**Records/Reports:**

The operator made available for review its BMP plan and records. The operator maintains a daily monitoring of raceway water temperatures (AM and PM) and the number of bags (50 lbs) of feed dispensed. For the month of May up to the date of inspection (10 days), 164 bags were dispensed or 8,200 lbs. Monthly feed summaries are maintained and reported on the Discharge Monitoring Reports.



The BMP plan includes narratives for material storage, training, farm maintenance, and waste cleaning. The operator maintains feed logs, maintenance logs, spill log, and dredging log.

**Rating: satisfactory**

**Self Monitoring Program:**

NPDES samples are collected and analyzed by EBCI personnel. Effluent samples are grab type. Total suspended solids, settleable solids, pH, and dissolved oxygen samples are collected once per month in conformance with the NPDES permit. Effluent total nitrogen, total phosphorus, and Raven Fork River upstream (background) pH are monitored once per quarter. The operator provides the feed rate.

**Rating: satisfactory**

**Site Review:**

The Morgan Mill at Cherokee Trout Farm is a CAAP cold water trout facility with a capacity of 250,000 pounds inventory. The facility is operated by Morgan Mill Resorts, Inc. The CAAP facility consists of 32 raceways, 3 ponds for public pond fishing, 5 settling ponds. Intake water is the Raven Fork River. The intake water may be treated for pH adjustment if needed. At normal operation, intake flows are between 4,500 to 5,500 gallons per minute.

The facility is no longer available for public pond fishing, and all trout are sent for processing. At the time of inspection, the facility was undergoing cleaning and concrete repair work. As such, the facility was operating at approximately 25% capacity.

There are 3 public trout ponds, of which two are empty for later clean out. Raceway water flows through one public pond; bypassing raceways under repair, and flows to the first 2 treatment ponds, where most fish wastes are captured. Downstream ponds are left as flow through. According to the operator, these downstream ponds were used by the previous owner for commercial production of black worms.

According to the BMP dredging log, the ponds were cleaned in 2009 and scheduled for dredging in winter 2011.

Mortality are collected routinely and composted with wood chips. Final product is used for fertilizer.

The effluent discharges into the Raven Fork River. At the time of inspection, the outfall was not accessible and its discharge could not be observed. The operator and EBCI agreed to a specific location off of Big Cove Road, adjacent to one of the downstream ponds for outfall access. The operator agreed to repair the pond berm and provide a pathway to the permitted outfall.

**Rating: unsatisfactory**



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## BMP Certification Form

Facility Name: \_\_\_\_\_ NPDES Permit Number: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title (owner, operator, etc.): \_\_\_\_\_

Date the BMP Plan was developed: \_\_\_\_\_

I certify that a BMP plan was developed for: \_\_\_\_\_  
(name of facility)

A copy of the BMP plan is available for inspection at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**ENCLOSURE J**





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

OCT 16 2012

CERTIFIED MAIL 70052570000148868922  
RETURN RECEIPT REQUESTED

Mr. Howard Brown, President  
C.R. Brown Enterprises, Inc.  
235 Milton Mashburn Drive  
Andrews, North Carolina 28901

Re: Compliance Evaluation Inspection  
Cherokee Trout Farm NPDES No. NC0054992

Dear Mr. Brown:

Enclosed please find a copy of the inspection report for the National Pollutant Discharge Elimination System (NPDES) inspection conducted at the Cherokee Trout Farm on September 17, 2012, by the U.S. Environmental Protection Agency. Based on the inspection and other observations, this office offers the following comments and recommendations and requests a response within ten (10) days of receipt of this letter:

1. As per your conversation with Mr. Michael Hom, you are to provide access off of Big Cove Road closest to the permitted outfall for the purpose of effluent sample collection. Provide a timetable in which this access will be constructed. Once this access is completed, this will satisfy the outstanding administrative orders against this facility.
2. Your request to modify the NPDES permit to indicate the change in the permit holder has been received. In addition, you have indicated that flow from the three raceways on the western boundary has a separate outfall into Raven Fork River. Please contact Ms. Bridget Staples, Municipal and Industrial NPDES Section, at 404-562-9783 or at staples.bridget@epa.gov, for NPDES permit coverage and status of the permit holder name change.

I appreciate the time and professional courtesy extended by you. If you have any questions or comments regarding the inspection findings, please contact Mr. Hom at (404) 562-9748 or at hom.michael@epa.gov.

Sincerely,

Stacey L. Bouma, Chief  
Stormwater & Residuals Enforcement Section  
Clean Water Enforcement Branch

Enclosure

cc: Mr. Jamie Long  
Eastern Band of Cherokee Indians

Mr. Mike Bolt  
Eastern Band of Cherokee Indians



**EPA**United States Environmental Protection Agency  
Washington, D.C. 20460**Water Compliance Inspection Report****Section A: National Data System Coding (i.e., PCS)**

<b>Transaction Code</b>	<b>NPDES</b>	<b>yr/mo/day</b>	<b>Inspection Type</b>	<b>Inspector</b>	<b>Facility Type</b>
N 5	NC0054992	12/09/17	C	R	4
<b>Remarks</b>					
<b>Inspection Work Days</b>	<b>Facility Self Monitoring Evaluation Rating</b>	<b>BI</b>	<b>QA</b>	<b>-----Reserved-----</b>	

**Section B: Facility Data**

<b>Name and Location of Facility Inspected (For industrial users discharging to POTW, also include POTW name and NPDES permit number)</b> Cherokee Trout Farm 10285 Big Cove Rd Cherokee, NC 28719	<b>Entry Time/Date</b> 03:20PM/09-17-2012	<b>Permit Effective Date</b> 12/01/2009
	<b>Exit Time/Date</b> 04:14PM/09-17-2012	<b>Permit Expiration Date</b> 11/30/2014
<b>Names of On-Site Representative(s)/Title(s)/Phone and Fax No's</b> Howard Brown, President, C.R. Brown Enterprises, Inc., 828-321-3335	<b>Other Facility Data (e.g., SIC NAICS, and other descriptive information)</b>	
<b>Name, Address of Responsible Official/Title/Phone and Fax No's</b> Robert Blankenship Sr., Owner, 704-497-9709		
		<b>Contacted</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**Section C: Areas Evaluated During Inspection (Check only those areas evaluated)**

<input checked="" type="checkbox"/> Permit	<input checked="" type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> MS4
<input checked="" type="checkbox"/> Records/Reports	<input type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pollution Prevention	
<input checked="" type="checkbox"/> Facility Site Review	<input type="checkbox"/> Laboratory	<input type="checkbox"/> Storm Water	
<input checked="" type="checkbox"/> Effluent/Receiving Waters	<input type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> Combined Sewer Overflow	
<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Sludge Handling/Disposal	<input type="checkbox"/> Sanitary Sewer Overflow	

**Section D: Summary of Findings/Comments***(Attach additional sheets of narrative and checklists, including Single Event Violation codes, as necessary)*

<b>SEV Codes</b> D0011	<b>SEV Description</b> Discharge without a permit	
<b>Name(s) and Signature(s) of Inspector(s)</b>  Michael Horn	<b>Agency/Office/Phone and Fax Numbers</b> EPA; 404-562-9748	<b>Date</b> 09-17-2012
<b>Signature of Management QA Reviewer</b>  Stacey Bourma, Chief	<b>Agency/Office/Phone and Fax Numbers</b> Stormwater & Residual Enf Section/CWEB/WPD/EPA	<b>Date</b> 10/15/2012

**Compliance Evaluation Inspection  
Cherokee Trout Farm  
Cherokee, NC  
NPDES Permit No. NC0054992**

**Introduction:**

On September 17, 2012, personnel from the United States Environmental Protection Agency, (EPA) Region 4, conducted a Compliance Evaluation Inspection (CEI) at the Cherokee Trout Farm. The purpose of the CEI was to evaluate the facility's National Pollutant Discharge Elimination System (NPDES) program.

The following individuals participated in the field inspection:

<u>Name</u>	<u>Organization</u>	<u>Telephone</u>
Mike Hom	EPA	404-562-9748
Sara Schiff	EPA	404-562-9870
Mike Bolt	Eastern Band of Cherokee Indians (EBCI)	828-497-2715
Howard Brown	C.R. Brown Enterprises, Inc.	828-321-3335

The Cherokee Trout Farm is a concentrated aquatic animal production (CAAP) cold water trout facility with a reported capacity of 500,000 pounds per year inventory. The facility is operated by C.R. Enterprises Inc. The facility was operated by a previous operator, Morgan Mill Resorts, Inc. until May 16, 2012.

**Permit:**

The facility is permitted under the NPDES Permit Number NC0054992, and was effective on December 01, 2009, with an expiration date of November 30, 2014.

The facility is also subject to EPA Administrative Order (AO) No. CWA-04-2005-4805 and CWA-04-2011-4759. AO CWA-04-2005-4805 was issued September 21, 2005 to the previous operator for improper operations and maintenance.

AO CWA-04-2011-4759 was issued March 31, 2011 to the previous operator for failure to notify and certify to EPA that a Best Management Practice (BMP) plan has been implemented in accordance with the facility's NPDES permit. The previous operator has submitted and implemented a BMP plan, with the current operator continuing the BMPs.

The current operator has requested NPDES permit ownership transfer on August 31, 2012.

At the time of inspection, it was stated by the current operator that a discharge from a series of raceways is not covered under the current NPDES permit.

**Rating: marginal**

**Records/Reports:**

The current operator made available for review its BMP plan and records. The operator maintains a daily monitoring of raceway water temperatures (AM and PM) and the number of bags (50 lbs) of feed dispensed. Monthly feed summaries are maintained and reported on the Discharge Monitoring Reports.

The BMP plan includes narratives for material storage, training, farm maintenance, medicated feed, and waste cleaning. The operator maintains feed logs, maintenance logs, spill log, and medicated feed log.

Records indicated during May 31<sup>st</sup> through June 9<sup>th</sup> 2012 and again in July 25<sup>th</sup> through August 5<sup>th</sup> 2012, the operator treated the stock with oxytetracycline, an antibiotic drug.

**Rating: satisfactory**

**Self Monitoring Program:**

NPDES samples are collected and analyzed by EBCI personnel. Effluent samples are grab type. Total suspended solids, settleable solids, pH, and dissolved oxygen samples are collected once per month in conformance with the NPDES permit. Effluent total nitrogen, total phosphorus, and Raven Fork River upstream (background) pH are monitored once per quarter. The operator provides the feed rate.

**Rating: satisfactory**

**Site Review:**

The Cherokee Trout Farm is a CAAP cold water trout facility with a reported capacity of 500,000 pounds per year inventory. The CAAP facility consists of 32 raceways, 3 intermediate ponds, and 5 settling ponds. Intake water is the Raven Fork River. The intake water may be treated for pH adjustment if needed. At normal operation, intake flows are between 4,500 to 5,500 gallons per minute. The facility was at near capacity.

Mortalities are collected routinely and composted with wood chips. Final product is used for fertilizer.

The effluent discharges into the Raven Fork River. At the time of inspection, the discharge was clear of fish parts, floating solids, visible foam or sheen. Outfall access is at a location off of Big Cove Road, and is a pathway along the lower sediment ponds with two required crossings of the flow channel before the sample point. The operator and EBCI agreed to a more desirable location off of Big Cove Road closest to the outfall. The operator agreed to install a pathway to the permitted outfall at this new location.

An alleged unpermitted discharge is located upstream of the permitted outfall according to the current operator. A side stream feeding 3 raceways near the western boundary is operational for trout fingerlings. According to the operator, the flow goes through the raceways and a series of ponds prior to its discharge into Raven Fork. Vegetation in the area was too dense to follow the flow. See Figure 1 for location of raceways.

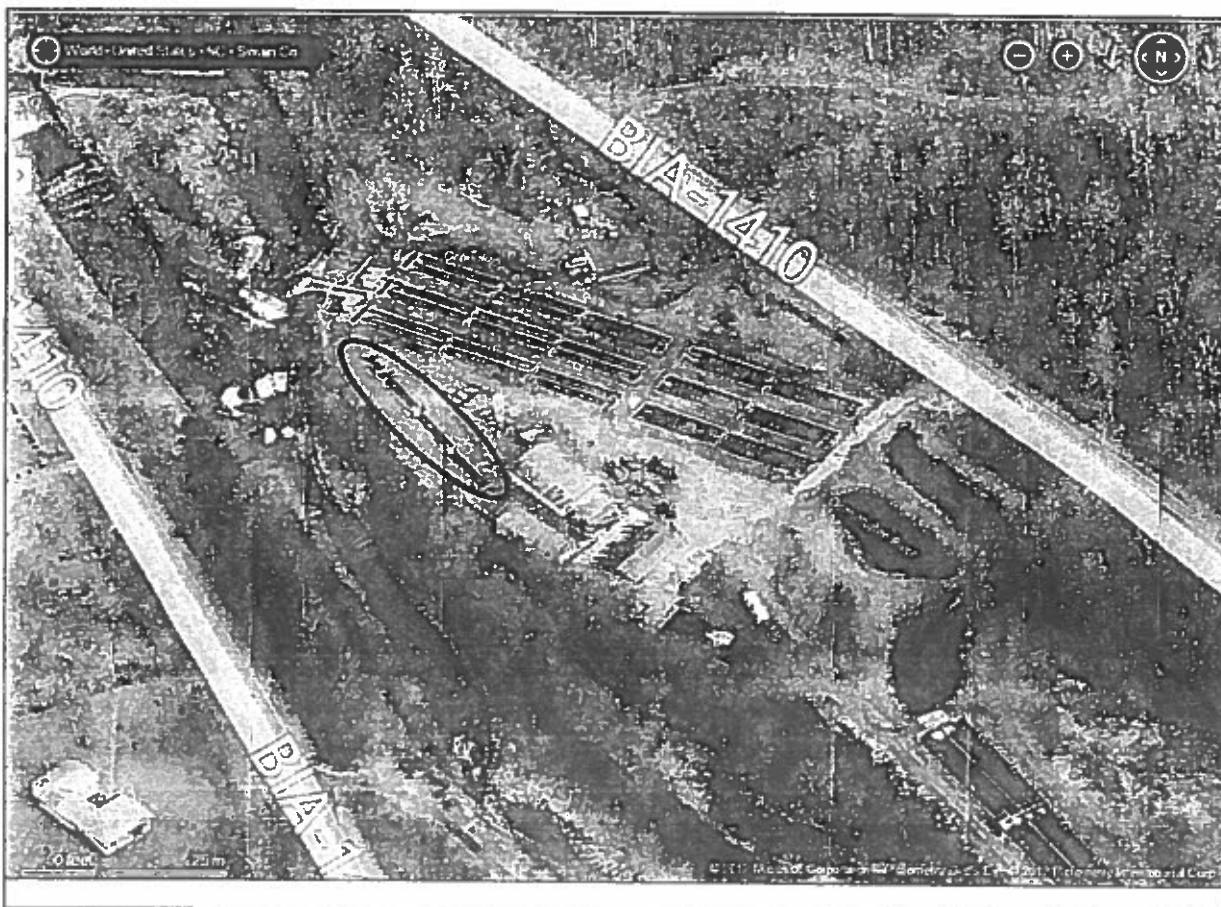


Figure 1 Aerial of Cherokee Trout Farm, Swain County, North Carolina. Oval depicts 3 raceways for fingerlings in which flows are separate from the main discharge. Ref: aerial from <http://www.bing.com/maps/>.

**Rating: marginal**

## ENCLOSURE K





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 04 2014

CERTIFIED MAIL 7012 1010 0002 0759 6274  
RETURN RECEIPT REQUESTED

Mr. Howard Brown  
President  
C.R. Brown Enterprises Inc.  
235 Milton Mashburn Drive  
Andrews, North Carolina 28901

Re: Administrative Order on Consent, Docket No.: CWA-04-2014-4767  
Cherokee Trout Farm

Dear Mr. Brown:

Enclosed, please find an executed copy of the Administrative Order on Consent (AOC), Docket No.: CWA-04-2014-4767, pertaining to the above referenced facility.

The EPA appreciates your cooperation in this matter. If you have any questions concerning the enclosed AOC, please contact Ms. Michele Wetherington, Associate Regional Counsel, at (404) 562-9613 or via email at [wetherington.michele@epa.gov](mailto:wetherington.michele@epa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER
	)	ON CONSENT
C.R. BROWN ENTERPRISES INC. DBA)	)	
CHEROKEE TROUT FARM	)	
CHEROKEE, NORTH CAROLINA	)	DOCKET NO. CWA-04-2014-4767
	)	
NPDES Permit No. NC0054992	)	
_____	)	

**ADMINISTRATIVE ORDER ON CONSENT**

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.
2. The following Findings of Fact and Determinations of Law are made and this Administrative Order on Consent ("AOC") is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Protection Division of the EPA, Region 4.

**II. Findings of Fact and Determinations of Law**

For purposes of this AOC, C.R. Brown Enterprises Inc. ("Respondent") admits the jurisdictional allegations and factual allegations set out below:

3. The Respondent is a corporation duly organized and existing under the laws of the State of North Carolina and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
4. At all times relevant to this action, Respondent owned and/or operated the Cherokee Trout Farm ("Facility"), located at 10285 Big Cove Road, Andrews, North Carolina 28719.
5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(a).



6. The EPA Region 4 issued NPDES Permit No. NC0054992 (Permit), effective on December 1, 2009, to the Respondent, authorizing a discharge from the Facility to the Raven Fork River in compliance with the terms, conditions, and requirements of the Permit, with an expiration date of November 30, 2014.

7. The Permit Part II.D.12 and 40 Code of Federal Regulations ("C.F.R.") § 122.21(d) require submittal of an NPDES permit application at least one hundred eighty (180) days before the previous permit expiration date. The Respondent has not submitted an NPDES permit application.

8. Because the Respondent failed to reapply timely, the provisions outlined in 40 C.F.R. § 122.6 – "Continuation of expiring permits", are not applicable.

9. The Respondent has violated Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, in that the Respondent has violated the Permit and 40 C.F.R. § 122.21(d) by not submitting an application at least one hundred eighty (180) days before the previous permit expiration date.

### **III. Order On Consent**

10. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), THE DIRECTOR HEREBY ORDERS AND RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW:

11. Within sixty (60) days of the effective date of this AOC, the Respondent shall submit to the EPA an NPDES permit application for the Facility.

12. The Respondent shall monitor and comply with the final effluent limitations included in Part I.A. of the Permit, and comply with the remaining terms of the Permit.

13. The Respondent shall maintain and operate the Facility as efficiently as possible.

14. The Respondent shall submit requests for any extension of time to comply with the requirements of this AOC to the addressee listed in Paragraph 16 below. Such request(s) must be made in writing, and shall include the reasons for the extension request and a date when compliance will be achieved. Any extension granted by the EPA must be in writing.

15. All reports, notifications, documentation and submittals required by this AOC shall be signed by a duly authorized representative of the Respondent as specified by 40 C.F.R. §§ 122.22(b)(2) and (d), and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

16. All reports, notifications, documentation and submittals required by this AOC shall be sent by certified mail or its equivalent to the following addressee:

Ms. Denisse D. Diaz, Chief  
ATTN: Michael Horn  
Clean Water Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

#### **IV. General Provisions**

17. Failure to comply with the requirements herein shall constitute a violation of this AOC and the CWA, and may subject the Respondent to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

18. This AOC shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

19. Nothing in this AOC shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this AOC or of the statutes and regulations upon which this AOC is based, or for the Respondent's violation of any other federal statute, regulation, or permit.

20. Nothing in this AOC is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in

this AOC. The EPA does not waive any right to bring an enforcement action against the Respondent for violation of any federal statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

21. This AOC applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors, and assigns.

22. Any change in the legal status of the Respondent's Facility, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this AOC.

23. Issuance of this AOC shall not be deemed an election by the EPA to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA.

24. The provisions of this AOC shall be deemed satisfied upon a determination by the EPA that the Respondent has fully completed and implemented the actions required by this AOC.

25. The Respondent admits to the jurisdictional allegations set forth within this AOC.

26. The Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to any right of judicial review of the AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.


27. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

**IV. Effective Date**

28. This AOC shall become effective upon the Respondent's receipt of the fully executed AOC.


**IT IS SO AGREED,**

**BY THE RESPONDENT, C.R. ENTERPRISES INC.:**

  
\_\_\_\_\_  
Howard R. Brown, President  
C.R. Brown Enterprises Inc.

Date: 8/28/2014

**BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

  
\_\_\_\_\_  
James D. Giattina, Director  
Water Protection Division  
U.S. EPA, Region 4

Date: 9/3/14

## **ENCLOSURE L**

### **INFORMATION REQUEST PURSUANT TO SECTION 308 OF THE CLEAN WATER ACT**

#### **Instructions**

1. Identify the person(s) responding to this Information Request.
2. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this Information Request.
3. Precede each answer with the text and the number of the Question and its subpart to which the answer corresponds.
4. All documents submitted must contain a notation indicating the Question and subpart of the Question to which they are responsive.
5. In answering each Information Request Question and subpart thereto, identify all documents and persons consulted, examined or referred to in the preparation of each response, and provide true and accurate copies of all such documents.
6. If information not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to the EPA. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify the EPA as soon as possible.
7. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds.
8. Where specific information has not been memorialized in a document, but is nonetheless responsive to a Question, you must respond to the Question with a written response.
9. If information responsive to this Information Request is not in your possession, custody or control, then identify the person from whom such information may be obtained.
10. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Question or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.
11. The EPA requests that all documents provided in an electronic format be compatible with pdf.
12. The EPA requests that all spreadsheet information be in an electronic format and compatible with MS Excel.
13. If any Question relates to activities undertaken by entities other than the recipient of this Information Request, and to the extent that you have information pertaining to such activities, provide such information for each entity.



### Definitions

1. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the Clean Water Act or its implementing regulations, in which case the statutory or regulatory definitions shall control.
2. Words in the masculine may be construed in the feminine if appropriate, and vice versa, and words in the singular may be construed in the plural if appropriate, and vice versa, in the context of a particular question or questions.
3. The terms "And" and "Or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed outside its scope.
4. The term "Identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
5. The term "Identify" means, with respect to a document, to provide its customary business description; its date; its number, if any (invoice or purchase order number); the identity of the author, addressee and/or recipient; and substance of the subject matter.
6. The term "Identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
7. The term "Facility" means the Cherokee Trout Farm (formerly known as "Morgan Mill at Cherokee Trout Farm") located at 10285 Big Cove Road, Cherokee, North Carolina 28719, Latitude 35° 34' 32" North; Longitude 83° 15' 30" West.
8. The term "You" and "Your" shall mean the C.R. Brown Enterprises, Inc.
9. The term "NPDES Permit" or "Permit" shall mean the National Pollutant Discharge elimination System Permit Number NC0054992.

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### Questions

1. On March 1, 2016, the EPA visited your Facility and witnessed wastewater bypasses and seeps at multiple locations along its treatment ponds and unauthorized discharges into Raven Fork River. With respect to the bypasses:
  - a. Provide the date when the bypasses and seeps first occurred and provide how long the bypasses and seeps have existed and the estimated flow rates;
  - b. Describe the events or conditions of the treatment ponds which necessitated the bypasses;
  - c. Describe whether the bypasses are intentional or unintentional;
  - d. Provide the dates and all reports that document berm inspections;
  - e. Provide a copy of all sample analyses of the bypasses and seeps performed in the last five years;
  - f. Provide a description of the corrective actions you have taken or will take to cease the bypass discharges, or a schedule to cease the bypass discharges;
  - g. Provide a description of actions you have taken or will take to ensure the structural integrity of the entire treatment pond berm located along the Raven Fork River;
  - h. Provide any information about overflow pipes within the treatment system including flow rate, location, and date used;
  - i. Provide the design and construction documents (drawings and specifications) used in the construction and repair of the treatment system berm;
  - j. Provide the dates, description, and documentation of any previous repairs done to the treatment system berm;
  - k. Provide all documentation relevant to the Best Management Practices associated with the structural maintenance as outlined in Part I.B.2 of the Permit;
  - l. Provide all information during the last five years related to the clean out of the treatment pond system, including all dates of clean out, cleanout method, and amount of material removed;
  - m. Provide a description and map of all water (from the Facility or not) that flows into the treatment system, such as rain water and streams;
  - n. Describe if the treatment system berm has been inspected by a licensed professional engineer during the last five years; and
  - o. Provide any design documents or any engineering calculations showing the designed volume, size, cleanout frequency, and required freeboard of the treatment system.

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2. On October 23, 2014, you submitted an NPDES permit application for the Facility that included one outfall located south of the settling ponds. On March 1, 2016, the EPA visited your Facility and witnessed an additional outfall and discharge from the secondary raceways located north of the settling ponds, but south of the intake. The additional outfall and discharge was also documented during an EPA compliance evaluation inspection on September 17, 2012. With respect to your NPDES permit application:
  - a. Provide an updated NPDES application to include the outfall from the secondary raceway and other current conditions subject to the CWA;
  - b. Provide all information about the unpermitted discharge, including annual quantity of fish produced, feed rate, flow rate, chemicals used, antibiotics, fish type, and cleanout frequency;
  - c. The unpermitted discharge was noted in an inspection by EPA on September 17, 2012 and observed during a site visit on March 1, 2016. Provide how long the unpermitted outfall has been discharging;
  - d. Provide a copy of all sample analyses of the unpermitted outfall performed in the last five years.

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## ENCLOSURE M

### **RIGHT TO ASSERT BUSINESS CONFIDENTIALITY CLAIMS**

(40 C.F.R. Part 2)

Except for effluent data, you may, if you desire, assert a business confidentiality claim as to any or all of the information that the EPA is requesting from you. The EPA regulation relating to business confidentiality claims is found at 40 C.F.R. Part 2.

If you assert such a claim for the requested information, the EPA will only disclose the information to the extent and under the procedures set out in the cited regulations. If no business confidentiality claim accompanies the information, the EPA may make the information available to the public without any further notice to you.

40 C.F.R. § 2.203(b). **Method and time of asserting business confidentiality claim.** A business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

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**ENCLOSURE N**

